IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 341 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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SHITALBEN SANJAYBHAI SHAH & 3 - Applicant(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR PR NANAVATI for Applicant(s) : 1 - 4.
MR HL JANI, APP for Respondent(s) : 1,
MR MITESH R AMIN for Respondent(s) : 2,
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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 25/10/2005

ORAL JUDGMENT

1.Rule. Mr.H.L.Jani, learned APP waives service of rune on behalf of respondent No.1. Mr.Mitesh Amin,

learned advocate appearing for respondent No.2 waives service of rule on behalf of respondent No.2.

2. The present petitioners have filed this petition under Article -227 of Constitution of India, praying for quashing and setting aside the FIR registered with the Satellite Police Station, being CR No.I-346 of 2004 qua the petitioners.

3. It is the case of the petitioners that the petitioner No.1 is a wife of the main accused No.1, namely, Shri Sanjay Rameshbhai Shah. She is a Non Executive Director of the Company known as Swar Silp Properties Limited, which was engaged in the business of construction of residential as well as commercial building. The said Company has been managed and run by the accused No.1. The petitioners Nos.2 to 4 were the paid employees of the Company and were not Executive Directors of the Company and, therefore, were not personally responsible for any act committed by the Company or

its Managing Director and/or Chairman of the Company. It is further stated that because of so many factors like unprecedented earthquake many of the co-operative Banks having gone into liquidation and because of the unprecedented happening of events the construction business of the Company suffered financial crises. On 20.4.2004, when the respondent No.2 original complainant visited his flat, it was found that the utensils kept in the said flat appeared to have been stolen. The respondent No.2 from the market sources heard that the builder was indulging into selling the flat twice over and, therefore, the respondent No.2 under the apprehension that the flats in respect of which the possession was given to the respondent No.2 must have been given to some other persons. The complainant, therefore, filed complaint before the Satellite Police Station, implicating the present petitions as accused.

4. Being aggrieved by the said complaint, present petition is filed before this Court.

5. This Court has passed an order on 25.3.2005, whereby the Court has issued notice for final disposal and the Court has also observed that the petitioners shall cooperate with the investigation and appear before the Investigating Agency as and when called for. The Court has further observed that petitioners have compounded the matter by entering into a written compromise. The Court, therefore, directed Investigating Officer not to inflict any formal arrest to the petitioners and if the Investigating Officer reaches to a conclusion after investigation that the petitioners are to be arrested, he will intimate the petitioners in writing before 10 days, so that they can approach appropriate forum for anticipatory bail or regular bail.

6. The Court has passed further order on 7.4.2005 observing that in view of the talk of compromise between the parties, the complainant is not interested in respect of arrest of accused and

hence time was grated to the petitioners.

7. During the pendency of this petition, Memorandum of Understanding was entered into between the original complainant and accused No.1 on 23.9.2005 and 18.10.2005. It is stated in the said Memorandum of Understanding that as per the order passed by this Court in Misc. Criminal Application No.8907/2004, the accused No.1 has given Rs.27,00,000/- along with interest at the rate of 6% p.a., aggregating to Rs.30,00,000/- to the respondent No.2. It is further stated in the Memorandum of Understanding that the said amount by way of Demand Draft, Cheque or in the form of Flat No.96 was given to the complainant and it was made clear in the Memorandum of Understanding that no grievance against any of the accused survived and no single amount remained due and payable by the accused to the complainant. It is also mentioned therein that the complainant has received Rs.45,000/- as well as Rs.1,90,000/- by way of Demand Draft. A copy of this Memorandums of

understanding is placed on record.

8. While considering the Memorandum of Understanding the Court is of the view that the matter is settled between the parties and no amount is due and payable by the accused to the complainant. The original complainant is present before the Court and he is identified by his advocate, Shri Mitesh Amin. He has admitted that the matter is completely settled between the parties and hence he has no objection if the complaint is set aside.

9. Mr.P.R.Nanavati, learned advocate appearing for the petitioners requested the Court to pass appropriate order considering the settled legal position on this issue. The Court should have considered that the dispute is settled between the parties and the said dispute is of civil nature and hence parties should not be dragged to face criminal litigation.

10. Considering the facts and circumstances of the case and in view of the Memorandum of Understanding arrived at between the parties and dispute having been already settled between them, the Court is inclined to entertain and allow this petition. The Court is, therefore, of the view that there is no necessity to send the parties to face the trial and to keep the criminal proceedings pending. The complaint being CR No.I-346/2004 is, therefore, quashed and set aside. Rule is made absolute without any order as to costs.

kks (K. A. PUJ, J.)